

U. S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
LOCAL RULES (through General Order 01-6 filed 3/26/01)
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**U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LOCAL COURT RULES**

SECTION I: CIVIL RULES

LOCAL RULE CV-1 Scope and Purpose of Rules

- (a) The rules of procedure in any proceeding in this court are those prescribed by the laws of the United States and the Federal Rules of Civil Procedure, along with these local rules and any orders entered by the Court. These local rules shall be construed as consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court of the United States and the United States Court of Appeals for the Fifth Judicial Circuit.
- (b) These rules may be known and cited as Local Court Rules.
- (c) The Supplemental Rules for Certain Admiralty and Maritime Claims, as adopted by the Supreme Court of the United States, shall govern all admiralty and maritime actions in this court.

LOCAL RULE CV-3 Commencement of Action

Habeas Corpus and §2255 Motions. The clerk may require that petitions for a writ of habeas corpus and motions filed pursuant to 28 U.S.C. §2255 be filed on a set of standardized forms approved by this court and supplied, upon request, by the clerk without cost, to the petitioner. Petitioners who are not proceeding in forma pauperis must pay a \$5.00 filing fee. See 28 U.S.C. §1914(a).

LOCAL RULE CV-4 Complaint, Summons and Return

- (a) The original and one copy of the complaint in a civil action must be filed with the clerk, except in patent, trademark or copyright cases, where an original and two copies of the complaint must be filed. Any waiver of service of summons shall be done in accordance with Rule 4(d), Fed.R.Civ.P. If service of summons is not waived, an original and two copies of the summons in a civil action must be prepared by the attorney for the plaintiff and submitted for each defendant to be served with a copy of the complaint. Additional copies of the complaint and summons in a civil action may be required by the clerk for service through certain governmental agencies or on certain governmental defendants. The clerk is required to collect the filing fee authorized by federal statute before accepting a complaint for filing.
- (b) On the complaint, all litigants shall type or print all party names contained in the case caption with the accurate capitalization and spacing for each party (e.g. Martha vanDerkloot, James De Borne'). This procedure seeks to ensure that accurate computer party name searches can later be performed. In multi-party cases, all parties in the case caption shall be numbered (e.g. plaintiff 1 through plaintiff 6; defendant 1 through defendant 20).
- (c) Service of civil process shall not be executed by the United States marshal except for ~~government~~ initiated process, extraordinary writ or when ordered to do so by a judge.
 - (1) The attorney (or any plaintiff if acting pro se) seeking service of civil process upon a pleading filed in this district will be responsible for designating a person over the age of 18 years who is not a party in the case to make service.
 - (2) Service may be made by such designated person by personal service pursuant to Rule 4, Fed.R.Civ.P. or by mailing a copy of the pleadings and summons by registered or certified mail to the person (restricted to addressee only) with return receipt requested.
 - (3) The service of subpoenas shall be completed pursuant to Rule 45(c), Fed.R.Civ.P. A subpoena may be served by any person who is not a party or attorney in the case and who is not less than 18 years of age.
 - (4) The party requesting service shall be responsible for preparing all process forms to be supplied by the clerk. When process is to be served by the United States marshal, the party seeking service shall complete the required U.S. Marshal Form 285.
- (d) Service through the Secretary of State for the State of Texas may be accomplished in the same manner as in (c)(1) and (c)(2) above and must be in accordance with applicable Texas statutes [note: two copies of the summons and complaint are required, as well as a fee to be paid to the Secretary of State].

LOCAL RULE CV-5 Service and Filing of Pleadings and Other Papers

- (a) **Filing of Papers Generally.** The original and one copy of pleadings, motions and other papers shall be filed with the clerk (*but see* Local Rule CV-4(b) (two copies of summons and complaint required when serving Texas Secretary of State); Fed.R.Civ.P. 4(i) (extra copies required when serving the United States as a party); and Fed. R. Civ. P. 5(d) (discovery or disclosure materials under Fed.R.Civ.P. 26(a)(1) and (a)(2), including notices of depositions, are not filed unless by order of the court)). Except where a judge has not yet been assigned to a case, pleadings, motions and other papers shall include the case caption, the last name of the assigned district judge or the appropriate magistrate judge, in the event that a case has been referred to a magistrate judge for disposition.
- (b) **Filing by Facsimile.** Filing by facsimile will only be allowed in situations determined by the court to be of an emergency nature or other compelling circumstance. The clerk shall not accept documents transmitted by facsimile equipment unless prior authorization has been obtained from the judge or magistrate judge to whom the case has been assigned, or at that judge's personal direction, with the exception of emergency pleadings in capital offense cases.
- (1) Authorized facsimile transmissions must be faxed directly to the clerk's office. Additionally,
- (A) the party filing the document must mail the original signed document to the clerk on the same day it is sent via facsimile, along with any reasonable fee established by the clerk; and
- (B) absent express judicial permission, documents filed by facsimile transmission shall not exceed 15 pages in length.
- Failure to comply with these requirements may result in the pleading being stricken from the record.
- (2) A facsimile pleading is deemed to be filed as of the date it is received by the court. The filed facsimile shall have the same force and effect as the original. The clerk shall assign the original signed pleading the same document number as the facsimile pleading.
- (3) The clerk shall not accept for facsimile filing an original complaint, a removal from state court, or any other document constituting a new action.
- (c) **Filing by After-Hours Depository.** The court maintains after-hours document depositories at the courthouses in Beaumont, Lufkin, Tyler, Marshall, Sherman and Texarkana. Any pleadings or other documents that are marked received using the electronic time stamp

contained in the depository and then placed in the box will be entered on the docket as of the time and date marked as received to the depository.

- (d) **Electronic Filing.** This section applies to the electronic filing of pleadings and papers.
 - (1) A pleading or paper may not be filed with the clerk by direct electronic transmission (i.e., from a party's or attorney's computer to the district court's computer database) without the prior authorization of the judge or magistrate judge assigned to that case.
 - (2) An electronic filing is complete as of the date and time it is received by the clerk. Service of pleadings or papers by electronic transmission on other parties or attorneys in the case, if permitted by the court, is also deemed complete as of the date and time the electronic transmission is received.
- (e) **Certificates of Service.** The certificate of service required by Fed.R.Civ.P. 5(d) shall indicate the date and method of service.
- (f) **Service by Facsimile.** Parties may serve copies of pleadings and other case related documents to other parties by facsimile in lieu of service and notice by mail. Such service is deemed complete as of the telephonic transfer to the recipient's facsimile machine or telecopier. Service by facsimile after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

LOCAL RULE CV-7 Pleadings Allowed; Form of Motions

- (a) **Generally.** All motions, unless made during a hearing or trial, shall be in writing and conform to the requirements of Local Rules CV-5 and CV-10. With each motion there shall also be filed and served a proposed order for the judge's signature. The order shall be a separate paper endorsed with the style and number of the cause.
- (1) **Dispositive Motions.** Dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a dispositive motion shall limit the response to the motion to thirty pages, excluding attachments, unless leave of court is first obtained. See Rule CV-56 regarding attachment to motions for summary judgment and responses thereto. Any reply brief to an opposed dispositive motion filed pursuant to section (f) of this rule shall not exceed ten pages, including attachments.
- (2) **Non-dispositive Motions.** Non-dispositive motions shall not exceed fifteen pages excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply brief to an opposed non-dispositive motion filed pursuant to section (f) of this rule shall not exceed five pages, including attachments.
- (b) **Documents Supporting Motions.** When allegations of fact not appearing in the record are relied upon in support of a motion, all affidavits and other pertinent documents shall be served and filed with the motion. Any attached materials should have the cited portions highlighted in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted page may be submitted if necessary to place the highlighted material in its proper context. Only relevant, cited-to excerpts of attached materials should be attached to the motion or the response.
- (c) **Briefing Supporting Motions.** The motion and any briefing shall be contained in one document. The briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. Briefing is an especially helpful aid to the judge in deciding motions to dismiss, motions for summary judgment, motions to remand, and post-trial motions.
- (d) **Response and Briefing.** The response and any briefing shall be contained in one document. A party opposing a motion shall file the response, any briefing and supporting documents within the time period prescribed by subsection (e) of this rule. A response shall be accompanied by a proposed order conforming to the requirements of subsection (a) of this rule. Briefing shall contain a concise statement of the reasons in opposition to the motion, and a citation of authorities upon which the party relies. In the event a party fails to oppose a motion in the manner prescribed herein, the court will assume that the party has no opposition.

- (e) **Time to File Response.** A party opposing a motion has 15 days from the date the motion was served in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision. See Fed.R.Civ.P. 6. Any party may separately move for an order of this court lengthening or shortening the period within which a response may be filed.
- (f) **Reply Briefs.** Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief within 5 days from the date the response is served.
- (g) **Oral Hearings.** A party may in a motion or a response specifically request an oral hearing, but the allowance of an oral hearing shall be within the sole discretion of the judge to whom the motion is assigned.
- (h) **Certificates of Conference.** In all non-prisoner cases, all motions must be accompanied by a “certificate of conference” at the end of the motion. Except as indicated in this section, the certificate must state (1) that counsel has conferred with opposing counsel in a good faith attempt to resolve the matter without court intervention, and (2) whether the motion is opposed or unopposed. The moving party must provide an explanation in the certificate in instances where an attorney conference has not occurred prior to the filing of the motion. There are some situations where the opportunity to confer is effectively unavailable, or where it is inappropriate or impossible to confer. Examples of this include dispositive motions and motions made prior to the appearance of any defendants. Counsel shall not unnecessarily invoke this exception.
- (i) **Re-urged Motions in Transferred/Removed Cases.** Any motions pending in another federal or state court made by any party will be considered moot at the time of transfer or removal unless they are re-urged in this court. See also Local Rule CV-81(d).

LOCAL RULE CV-9 Pleadings and Special Matters

Admiralty and Maritime Claims. Admiralty and maritime claims in this court are governed by the Local Admiralty Rules, which appear as Appendix J to these rules.

LOCAL RULE CV-10 Form of Pleadings

(a) **Generally.** When offered for filing, all papers shall:

- (1) be endorsed with the style and number of the action;
- (2) contain a caption containing the name and party designation of the party filing the paper and a statement of the character of the paper clearly identifying each included pleading, motion or other paper (e.g., Defendant John Doe's Answer and Motion to Dismiss under Rule 12(b)(6)) [note: see Local Rule CV-38(a) for cases involving jury demands];
- (3) be signed by the attorney in charge, or with his or her permission, and contain beneath the signature line his or her name, bar I.D. number, post office address, telephone number and facsimile number.
- (4) be plainly written, typed, or printed, double-spaced, on 8 1/2 inch by 11 inch white paper, fastened at the top only, and punched at the top center with two holes 2 7/8 inches apart;
- (5) be in a font no smaller than twelve (12) point type.

(b) **No Covers.** "Blue backs" and other covers are not to be submitted with papers.

(c) **Deficient pleadings/documents.** The clerk shall monitor papers for compliance with the federal and local rules as to format and form. If the paper sought to be filed is deficient as to form, the clerk shall immediately notify counsel, who should be given a reasonable opportunity to cure the perceived defect. If the perceived defect is not cured in a timely fashion, the clerk shall refer the matter to the appropriate district or magistrate judge for a ruling as to whether the papers should be made part of the record.

(d) **Corporate disclosure statement.** Any non-government corporate party to an action in this court shall file a "corporate disclosure statement" identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock. A party shall file the corporate disclosure statement with its initial pleading filed in the court, and shall supplement the statement within a reasonable time of any change in the information.

LOCAL RULE CV-11 Signing of Pleadings, Motions and Other Papers

Attorney-in-charge.

- (a) **Designation.** On first appearance through counsel, each party shall designate an attorney-in-charge. Signing the pleadings effects designation.
- (b) **Responsibility.** The attorney-in-charge is responsible in that action for the party. That individual attorney shall attend all court proceedings or send a fully informed attorney with authority to bind the client.
- (c) **Signing the Pleadings.** Every document filed must be signed by or by permission of, the attorney-in-charge. Requests for postponement of the trial shall be signed by the attorney of record and the party making the request.
 - (1) *Required Information.* Under the signature shall appear the
 - (A) attorney's individual name;
 - (B) designation "attorney-in-charge";
 - (C) state bar number;
 - (D) office address including zip code; and
 - (E) telephone number with area code.
 - (F) telephone number with area code of facsimile machine, if available (see Local Rule CV-77)
 - (2) *Allowed Information.* The name of the law firm and name(s) of associate counsel may appear with the designation "of counsel."
- (d) **Withdrawal of Counsel.** Although no delay will be countenanced because of a change in counsel, withdrawal of the attorney-in-charge may be effected by motion and order, under conditions imposed by the court.
- (e) **Notices.** All communications about an action will be sent to the attorney-in-charge and one other attorney designated by the attorney-in-charge, who are responsible for notifying associate counsel.
- (f) **Change of Address.** Notices will be sent only to the address on file. A lawyer or pro se litigant is responsible for keeping the clerk advised in writing of the current address. Counsel of record and pro se litigants must include in this advisement of change of address the case numbers of all pending cases in which they are participants in this district.

LOCAL RULE CV-16 Pretrial Conferences; Scheduling; Management

- (a) **Scheduling Conferences.** Within sixty (60) days after the first defendant appears, the judge assigned to a case shall convene a scheduling conference pursuant to Fed.R.Civ.P. 16 and 26. The scheduling conference may be conducted by telephone at the judge's discretion.
- (b) **Pretrial Orders.** Pretrial orders will be standardized and used by each judge. The standardized form can be found in Appendix D of these rules.

LOCAL RULE CV-26 Provisions Governing Discovery; Duty of Disclosure

- (a) **No Excuses.** Absent court order to the contrary, a party is not excused from responding to discovery because there are pending motions to dismiss, to remand or to change venue. Parties asserting the defense of qualified immunity may submit a motion to limit discovery to those materials necessary to decide the issue of qualified immunity.
- (b) **Disclosure of Expert Testimony.**
 - (1) When listing the cases in which the witness has testified as an expert, the disclosure shall include the styles of the cases, the courts in which the cases were pending, the cause numbers, and whether the testimony was in trial or deposition.
 - (2) By order in the case, the judge may alter the type or form of disclosures to be made with respect to particular experts or categories of experts, such as treating physicians.
- (c) **Notice of Disclosure.** The parties shall promptly file a notice with the court that the disclosures required under Fed.R.Civ.P. 26(a)(1) and (a)(2) have taken place.
- (d) **Relevant to the Claim or Defense.** The following observations are provided for counsel's guidance in evaluating whether a particular piece of information is "relevant to the claim or defense of any party:"
 - (1) It includes information that would not support the disclosing parties' contentions;
 - (2) It includes those persons who, if their potential testimony were known, might reasonably be expected to be deposed or called as a witness by any of the parties;
 - (3) It is information that is likely to have an influence on or affect the outcome of a claim or defense;
 - (4) It is information that deserves to be considered in the preparation, evaluation or trial of a claim or defense; and
 - (5) It is information that reasonable and competent counsel would consider reasonably necessary to prepare, evaluate or try a claim or defense;
- (e) **Discovery Hotline** - (903) 590-1198. The court shall provide a judge on call during business hours to rule on discovery disputes and to enforce provisions of these rules. Counsel may contact the judge by dialing the hotline number listed above for any case in the district and get an immediate hearing on the record and ruling on the discovery dispute, including whether a particular discovery request falls within the applicable scope of discovery, or request to enforce or modify provisions of the rules as they relate to a particular case.

LOCAL RULE CV-30 Depositions Upon Oral Examination

In cases where there is a neutral non-party witness or a witness whom all parties must examine, the time limit shall be divided equally among plaintiffs and defendants. Depositions may be taken after 5:00 p.m., on weekends, or holidays with approval of a judge or by agreement of counsel. Unless permitted by Fed.R.Civ.P. 30(d)(1), a party may not instruct a deponent not to answer a question. Objections to questions during the oral deposition are limited to “Objection, leading” and “Objection, form.” Objections to testimony during the oral deposition are limited to “Objection, nonresponsive.” These objections are waived if not stated as phrased during the oral deposition. All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived.

LOCAL RULE CV-34 Production of Documents and Things.

Authorizations. At any time after the parties have conferred as required by Rule 26(f), a party may request medical records, wage and earning records or Social Security Administration records of another party as follows:

(1) Where a party's physical or mental condition is at issue in the case, that party shall provide to the opposing party's counsel either the party's medical records or a signed authorization so that records of health care providers which are relevant to injuries and damages claimed may be obtained. If additional records are desired, the requesting party will have to show the need for them.

(2) Where lost earnings, lost earning capacity or back pay is at issue in the case, the party making such claims shall furnish signed authorizations to the opposing party's counsel so that wage and earning records of past and present employers, and the Social Security Administration records, may be obtained.

(3) Copies of any records obtained with authorizations provided pursuant to sections (1) or (2) above shall be promptly furnished to that party's counsel. Records which are obtained shall remain confidential. The attorney obtaining such records shall limit their disclosure to the attorney's client (or in the case of an entity, those employees or officers of the entity necessary to prepare the defense), the attorney's own staff and consulting and testifying experts who may review the records in connection with formulating their opinions in the case.

LOCAL RULE CV-38 Jury Trial of Right

- (a) **Jury Demand.** Pleadings (i.e., complaint, answer, notice of removal) in which a jury is demanded shall bear the word “jury” at the top, immediately below the case number.
- (b) **Selection of Jurors.** Trial jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statute and rule. See Appendix E.
- (c) **Taxation of Jury Costs for Late Settlement.** Except for good cause shown, whenever the settlement of an action tried by a jury causes a trial to be postponed, canceled or terminated before a verdict, all juror costs, including attendance fees, mileage, and subsistence, may be imposed upon the parties unless counsel has notified the court and the clerk’s office of the settlement at least one full business day prior to the day on which the trial is scheduled to begin. The costs shall be assessed equally against the parties and their counsel unless otherwise ordered by the court.

LOCAL RULE CV-41 Dismissal of Actions

A dismissal for failure to prosecute may be ordered by this court upon motion by an adverse party, or upon this court's own motion.

LOCAL RULE CV-42 Consolidation; Separate Trials

Consolidation of Actions.

- (a) **Duty to Notify Court of Collateral Proceedings and Re-filed Cases.** Whenever a civil matter, commenced in or removed to the court, involves subject matter that either comprises all or a material part of the subject matter or operative facts of another action, whether civil or criminal, then pending before this or another court or administrative agency, or previously dismissed or decided by this court, counsel for the filing party shall identify the collateral proceedings and/or re-filed case(s) on the civil cover sheet filed in this court. The duty to notify the court and opposing counsel of any collateral proceeding continues throughout the time the action is before this court.
- (b) When two or more actions are pending before a judge which involve either (1) a common question of law or fact; or (2) the same parties and issues; or (3) different or additional parties and issues all of which arise out of the same transaction or occurrence, that judge may order that all or part of the actions be consolidated.
- (c) **Consolidation in Multi-Judge Division.** When actions that may be consolidated under (b) above have been filed in a division wherein the caseload is divided between two or more judges, the actions, upon consolidation, shall be assigned to the judge who was assigned the initial action or actions. The judge assigned the initial action or actions has the prerogative of declining the transfer and assignment of the additional action or actions.

LOCAL RULE CV-45 Subpoena

Attorneys shall prepare all subpoenas. See Fed.R.Civ.P. 45(a)(3).

LOCAL RULE CV-47 Selection of Jurors

Communication with Jurors

- (a) No party or attorney for a party shall converse with a member of the jury during the trial of an action.
- (b) After a verdict is rendered, an attorney must obtain leave of the judge before whom the action was tried to converse with members of the jury.

LOCAL RULE CV-56 Summary Judgment

Summary Judgment Procedure.

- (a) Any party moving for summary judgment should identify both the legal and factual basis for its motion. The text of the motion or an appendix thereto must include a “Statement of Material Facts.” If the movant relies upon evidence to support its motion, the motion should include appropriate citations to proper summary judgment evidence as to which the moving party contends there is no genuine issue of material fact for trial. Proper summary judgment evidence should be attached to the motion in accordance with section (d) of this rule.
- (b) Any party opposing the motion should serve and file a response that includes in the text of the response or as an appendix thereto, a “Statement of Genuine Issues.” The response should be supported by appropriate citations to proper summary judgment evidence as to which it is contended that a genuine issue of material fact exists. Proper summary judgment evidence should be attached to the response in accordance with the procedure contained in section (d) of this rule.
- (c) In resolving the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the “Statement of Genuine Issues” filed in opposition to the motion, as supported by proper summary judgment evidence. The court will not scour the record in an attempt to determine whether the record contains an undesignated genuine issue of material fact for trial before entering summary judgment.
- (d) As used within this rule, “proper summary judgment evidence” means excerpted copies of pleadings, depositions, answers to interrogatories, admissions, affidavits, and other admissible evidence cited in the motion for summary judgment or the response thereto. The phrase “appropriate citations” means that any excerpted evidentiary materials that are attached to the motion or the response should be referred to by page and, if possible, by line. Any attached evidentiary materials should have the cited portions highlighted in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted page may be submitted if necessary to place the highlighted material in its proper context. Only relevant, cited-to excerpts of evidentiary materials should be attached to the motion or the response.

LOCAL RULE CV-63 Inability of a Judge to Proceed

Reassignment of Actions after Recusal or Disqualification

(a) **Single-Judge Divisions .**

- (1) Upon the disqualification or recusal of a judge from participation in an action or proceeding pending in a division wherein actions are assigned to only one judge, a reassignment and transfer of the action or matter shall be made in accordance with an order of the chief judge of the district.
- (2) When the chief judge is the only judge who is assigned actions in a particular division and is disqualified or recuses himself in an action or proceeding pending in that division, the action or matter systematically shall be reassigned and transferred to the judge in active service, present in the district and able and qualified to act as chief judge, who is senior in precedence over the remaining judges in the district. Such action or matter may be reassigned and transferred by such acting chief judge as provided in section (a)(1) above.

(b) **Multi-Judge Divisions .** Upon the disqualification of a judge from participation in an action or proceeding pending in a division wherein the caseload is divided between two judges, the action or matter systematically shall be reassigned and transferred to the other judge sitting in that division. Where the caseload in the division is divided between more than two judges, the action or matter systematically shall be reassigned and transferred randomly to a judge in the division who is not disqualified. The clerk shall randomly assign another case to the recusing/disqualified judge in place of the case he/she recused in or was disqualified in. In instances where each judge in a two-judge or a multi-judge division recuses himself or is disqualified, the action or matter systematically shall be reassigned and transferred in accordance with an order of the chief judge of the district to any judge in active service, in another division, who is not disqualified.

(c) **All Judges Disqualified.** If all of the judges in the district shall recuse themselves or be disqualified to serve with reference to a particular civil or criminal action or matter, the clerk of the court shall, without delay, so certify to the chief judge of the Court of Appeals for the Fifth Circuit, in order that he may re-assign such action or matter to a suitable judge.

LOCAL RULE CV-65 Injunctions

An application for a temporary restraining order or for a preliminary injunction shall be made on an instrument separate from the complaint.

LOCAL RULE CV-65.1 Security; Proceedings Against Sureties

No attorney, clerk, or marshal, nor the deputies of any clerk or marshal shall be received as security on any cost, bail, attachment, forthcoming or replevy bond, without written permission of a judge of this court.

LOCAL RULE CV-72 Magistrate Judges

Powers and Duties of a United States Magistrate Judge in Civil Cases. The powers and duties of a United States magistrate judge serving within the Eastern District of Texas shall be governed by the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges adopted by this court. See Appendix B. Nothing in this rule shall be construed to limit the jurisdiction of a United States magistrate judge serving in the Eastern District of Texas acting pursuant to powers directly conferred by act of Congress or applicable rule.

LOCAL RULE CV-77 District Courts and Clerks

Notice of Orders and Judgments. The clerk may serve and give notice of judicial orders and judgments by facsimile, in lieu of service and notice by mail, to any person who has provided a facsimile machine phone number with his/her pleadings as specified in Local Rule CV-11(c)(1)(F). By providing the court with a facsimile number, the party submitting the pleadings is deemed to have consented to receive service and notice of judicial orders and judgments from the clerk by facsimile. Persons who wish to be excluded from receiving judicial notices by facsimile may do so by sending a written notice to the clerk.

- (A) Notice of judicial orders and judgments is complete when the clerk obtains electronic confirmation of the receipt of the transmission. Notice by facsimile by the clerk that occurs after 5:00 p.m. on any business day is deemed effective as of the following business day.

LOCAL RULE CV-79 Books and Records Kept by the Clerk

- (a) **Disposition of Exhibits And/or Sealed Documents by the Clerk.** Thirty days after a civil action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to take the following actions:
- (1) **Exhibits.** Destroy any sealed or unsealed exhibits filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial;
 - (2) **Sealed documents.** Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.
- (b) **Removal of Papers, Records, etc.** The clerk shall not allow the original copy of any papers, records, proceedings, or any other paper, writing or memorandum, belonging to or related to and filed in any civil action in this court to be removed from the clerk's office without permission of the judge to whom the case is assigned.
- (c) **Submission and Disposition of Trial Exhibits.**
- (1) The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without an order of the court. The clerk shall return to the party any physical exhibits not complying with this rule.
 - (2) Trial exhibits shall be properly marked, but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. If parties wish, additional copies of trial exhibits may be submitted in binders for the court's use.
- (d) **Hazardous Papers or Items Sent to the Court.** Prisoners and other litigants shall not send to this court (including the district clerk, any judges and any other court agency) papers or items that constitute a health hazard as defined below:
- (1) The clerk is authorized to routinely and immediately dispose of, without seeking a judge's permission, any papers or items sent to the court by prisoners or other litigants that are smeared with or contain blood, hair, food, feces, urine or other body fluids. Although "[t]he clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form," Fed. R. Civ. P. 5(e), papers or other items containing or smeared with excrement or body fluids can be excepted from this rule on the ground that they constitute a health hazard to court employees and can be refused by the clerk for that reason, which is a reason other than improper form.

- (2) In the event the clerk receives weapons or drugs that are intended to be filed as exhibits, the clerk shall notify the judge assigned to the case of that fact, or in the event that no case has been filed, the chief judge.
- (3) The clerk shall maintain a log of the items that are disposed of pursuant to General Order 96-6. The log shall contain the case number and style, if any, the name of the prisoner or litigant who sent the offending materials, and a brief description of the item disposed of. The clerk also shall notify the prisoner/litigant and, if applicable, the warden or other supervising official of the appropriate correction facility that the item in question was destroyed and that sanctions may be imposed if the prisoner continues to forward papers, items or physical exhibits in violation of General Order 96-6.

LOCAL RULE CV-81 Removed Actions

Parties removing cases from state court to federal court shall comply with the following:

- (a) File with the clerk a notice of removal which reflects the style of the case exactly as it was styled in state court;
- (b) If a jury was requested in state court, the removed action will be placed on the jury docket of this court provided the removing party or parties includes the word “jury” at the top of the notice for removal, immediately below the case number (see Local Rule CV-38(a));
- (c) The removing party or parties shall furnish to the clerk the following information at the time of removal:
 - (1) a list of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (pending, dismissed);
 - (2) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
 - (3) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her; and
 - (4) a record of which parties have requested trial by jury (this information is in addition to placing the word “jury” at the top of the Notice of Removal immediately below the case number).
 - (5) the name and address of the court from which the case is being removed.
- (d) Any motions pending in state court made by any party will be considered moot at the time of removal unless they are re-urged in this court.

LOCAL RULE CV-83 Rules by District Courts; Judge's Directives

Docket Calls. Traditional docket calls are abolished. Each judge shall endeavor to set early and firm trial dates which will eliminate the need for multiple-case docket calls.

SECTION II: CRIMINAL RULES

LOCAL RULE CR-1 Scope

- (a) The rules of procedure in any criminal proceeding in this court are those prescribed by the laws of the United States and the Federal Rules of Criminal Procedure, along with these local rules and any orders entered by the Court. These rules shall be construed as consistent with acts of Congress and rules of practice and procedure prescribed by the Supreme Court of the United States and the United States Court of Appeals for the Fifth Judicial Circuit.
- (b) These rules may be known and cited as Local Criminal Rules.
- (c) The disposition of criminal cases shall be governed by the Plan for the United States District Court, Eastern District of Texas, for Achieving Prompt Disposition of Criminal Cases. See Appendix F.
- (d) The powers and duties of a United States magistrate judge serving within the Eastern District of Texas in criminal cases shall be governed by the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges adopted by this Court. See Appendix B. Nothing in this rule shall be construed to limit the jurisdiction of a United States magistrate judge serving in the Eastern District of Texas acting pursuant to powers directly conferred by act of Congress or applicable rule.

LOCAL RULE CR-6 The Grand Jury

- (a) **Selection of Grand Jurors.** Grand jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statute and rule. See Appendix E.
- (b) **Grand Jury Subpoenas.** Sealed grand jury subpoenas shall be kept by the clerk for three (3) years from the date the witness is ordered to appear. After that time, the clerk may destroy the subpoenas

LOCAL RULE CR-10 Arraignments

In the interest of reducing delays and costs, judges and magistrate judges may conduct the arraignment at the same time as the post-indictment initial appearance. The defendant may also file a written waiver of arraignment with the court.

LOCAL RULE CR-12 Pleadings and Motions Before Trial

Criminal defense attorneys must confer with the assistant U.S. attorney in a good faith attempt to resolve pretrial disputes before filing a motion, and must certify to such a conference in the motion.

LOCAL RULE CR-17 Subpoena

Attorneys shall prepare all subpoenas. The service of subpoenas shall be completed pursuant to Rule 17(d), Fed.R.Crim.P. A subpoena may be served by any person who is not a party or attorney in the case and who is not less than 18 years of age.

LOCAL RULE CR-24 Trial Jurors

(a) Selection of Jurors.

Petit jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statute and rule. See Appendix E.

(b) Communication with Jurors.

- (1) No party or attorney for a party shall converse with a member of the jury during the trial of an action.
- (2) After a verdict is rendered but before the jury is discharged from further duty, an attorney may obtain leave of the judge before whom the action was tried to converse with members of the jury.
- (3) Nothing in this rule shall be construed to limit the power of the judge before whom an action is being or has been tried to permit conversations between jurors and attorneys.

LOCAL RULE CR-44 Right to and Assignment of Counsel

The appointment of counsel in criminal cases for persons who are financially unable to obtain adequate representation is governed by the local Criminal Justice Plan adopted by the court. See Appendix G.

LOCAL RULE CR-47 Motions

- (a) **Generally.** All motions in criminal cases, unless made during a hearing or trial, shall be in writing and conform to the requirements of Local Rule CR-49. Every motion shall be signed by the attorney-in-charge, or with his or her permission. The signature of an attorney constitutes a certificate by him or her that he or she has read the motion, that there are good grounds to support it, and that it is not interposed for delay. With each motion there shall also be filed and served a proposed order for the judge's signature. The order shall be a separate paper endorsed with the style and number of the cause.
- (b) **Documents Supporting Motions.** When allegations of fact not appearing in the record are relied upon in support of a motion, all affidavits and other pertinent documents shall be served and filed with the motion.
- (c) **Brief Supporting Motions.** Motions may be accompanied by a brief. The brief shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. All briefs must be filed concurrent with the motion they support.
- (d) **Response and Brief.** If a party opposes a motion, he or she shall file his or her response, brief, and supporting documents as are then available within the time period prescribed by subsection (e) of this rule. A response shall be accompanied by a proposed order conforming to the requirements of subsection (a). Briefs shall contain a concise statement of the reasons in opposition to the motion, and a citation of authorities upon which the party relies. In the event a party fails to oppose a motion in the manner prescribed herein, the court will assume that the party has no opposition.
- (e) **Time to File Supporting Documents and Brief.** A party opposing a motion has 10 days in which to serve and file supporting documents and briefs after which the court will consider the submitted motion for decision. Any party may separately move for an order of this court lengthening or shortening the period within which supporting documents and briefs may be filed.
- (f) **Service.** All parties shall serve copies of their motion papers upon all other parties to the action. A certificate of service attached to the papers as provided for in Local Rule CR-49(a)(1) shall indicate the time and method of service.
- (g) **Oral Hearings.** A party may in a motion or a response specifically request an oral hearing, but the allowance of an oral hearing shall be within the sole discretion of the judge to whom the motion is assigned.

LOCAL RULE CR-49 Service and Filing of Papers

(a) Generally.

- (1) When offered for filing, all papers shall be (1) endorsed with the style and number of the action and a statement of the character of the paper (e.g., MOTION TO SUPPRESS), (2) plainly written, typed, or printed, double-spaced, on 8 1/2 inch by 11 inch white paper, stapled at the top only, and punched at the top center with two holes 2 7/8 inches apart, (3) signed by the attorney in charge and contain beneath the signature line his or her name, bar I.D. number, post office address and telephone number. “Blue backs” and other covers are not to be submitted with papers. No brief or motion shall be filed with the court with a font or typeface smaller than twelve (12) point type and 12 characters per inch. A certificate of service must be attached to and made a part of all papers when required by the Federal Rules of Criminal Procedure.
- (2) The original and one copy of pleadings, motions and other papers shall be filed with the clerk. Except where a judge has not yet been assigned to a case, pleadings, motions and other papers shall include the case caption, the last name of the (a) assigned district judge and (b) the appropriate magistrate judge, in the event that a case has been referred to a magistrate judge for disposition.
- (3) **Deficient pleadings/documents.** The clerk shall monitor papers for compliance with the federal and local rules as to format and form. If the paper sought to be filed is deficient as to form, the clerk shall immediately notify counsel, who should be given a reasonable opportunity to cure the perceived defect. If the perceived defect is not cured in a timely fashion, the clerk shall refer the matter to the appropriate district or magistrate judge for a ruling as to whether the papers should be made part of the record.
- (4) **Multi-defendant cases.**
 - (A) **Copies.** Parties in criminal cases shall provide the clerk with the original plus one copy of each document (see Local Rule CR-49(a)(2), plus one additional copy for the case file of each defendant to whom the document applies.
 - (B) **Defendant Number.** In multi-defendant cases, each defendant receives a “defendant number”. The numbers are assigned in the order in which defendants are listed on the complaint or indictment. When filing documents with the court, the parties shall identify by name and number each defendant to whom the document being filed applies.
 - (C) **Sealed Indictments.** In multi-defendant cases involving one or more sealed indictments, the Government should, at the time the sealed indictment is filed, provide the clerk with appropriately redacted copies of the indictment for each

defendant. The goal of this procedure is to protect the confidential aspect of the sealed indictment with regard to any defendants not yet arrested.

(b) Facsimile Filing.

- (1) Filing by facsimile will only be allowed in situations determined by the court to be of an emergency nature or other compelling circumstance. The clerk shall not accept documents transmitted by facsimile equipment unless prior authorization has been obtained from the judge or magistrate judge to whom the case has been assigned, or at that judge's personal direction, with the exception of emergency pleadings in capital offense cases.
- (2) Authorized facsimile transmissions must be faxed directly to the clerk's office. Additionally,
 - (A) the party filing the document must mail the original signed document to the clerk on the same day it is sent via facsimile, along with any reasonable fee established by the clerk; and
 - (B) absent express judicial permission, documents filed by facsimile transmission shall not exceed 15 pages in length.

Failure to comply with these requirements may result in the pleading being stricken from the record.

- (3) A facsimile pleading is deemed to be filed as of the date it is received by the court. The filed facsimile shall have the same force and effect as the original. The clerk shall assign the original signed pleading the same document number as the facsimile pleading.

(c) Attorney-in-Charge.

- (1) **Designation.** On first appearance through counsel, each party shall designate an attorney-in-charge. Signing the pleadings effects designation.
- (2) **Responsibility.** The attorney-in-charge is responsible in that action for the party. That individual attorney shall attend all court proceedings or send a fully informed attorney with authority to bind the client.
- (3) **Signing the Pleadings.** Every document filed must be signed by or by permission of, the attorney-in-charge.
 - (A) *Required Information.* Under the signature shall appear the
 - (i) attorney's individual name;
 - (ii) designation "attorney-in-charge";

- (iii) state bar number;
- (iv) office address including zip code;
- (v) telephone number with area code; and
- (vi) telephone number with area code of facsimile machine, if available (see Local Rule CV-77).

(B) *Allowed Information.* The name of the law firm and name(s) of associate counsel may appear with the designation “of counsel.”

- (4) **Withdrawal of Counsel.** Although no delay will be countenanced because of a change in counsel, withdrawal of the attorney-in-charge may be effected by motion and order, under conditions imposed by the court.
 - (5) **Notices.** All communications about an action will be sent to the attorney-in-charge, who is responsible for notifying associate counsel.
 - (6) **Change of Address.** Notices will be sent only to the address on file. A lawyer or pro se litigant is responsible for keeping the clerk advised in writing of the current address. Counsel of record and pro se litigants must include in this advisement of change of address the case numbers of all pending cases in which they are participants in this district.
- (d) **Filing by After-Hours Depository.** The court maintains after-hours document depositories at the courthouses in Beaumont, Lufkin, Tyler, Marshall, Sherman and Texarkana. Any pleadings or other documents that are marked received using the electronic time stamp contained in the depository and then placed in the box will be entered on the docket as of the time and date marked as received to the depository.
- (e) **Electronic Filing.** This section applies to the electronic filing of pleadings and papers.
- (1) A pleading or paper may not be filed with the clerk by direct electronic transmission (i.e., from a party’s or attorney’s computer to the district court’s computer database) without the prior authorization of the judge or magistrate judge assigned to that case. Additional guidelines regarding electronic filing in this district may be promulgated from the court from time to time.
 - (2) An electronic filing is complete as of the date and time it is received by the clerk. Service of pleadings or papers by electronic transmission on other parties or attorneys in the case, if permitted by the court, is also deemed complete as of the date and time the electronic transmission is received.
- (f) **Service and Notice by Facsimile or Electronic Transmission.**
- (1) The clerk may serve and give notice of judicial orders and judgments by facsimile or

electronic transmission, in lieu of service and notice by mail, to any person who has a written request on file to receive service and notice of judicial orders and judgments from the clerk by facsimile and/or electronic transmission. This request remains effective in all subsequent litigation involving the person who filed the request. However, that person may withdraw his or her request by sending written notice to the clerk.

- (2) Service and notice of judicial orders and judgments are complete when the clerk obtains electronic confirmation of the receipt of the transmission. Service by electronic transmission or facsimile by the clerk that occurs after 5:00 p.m. on any business day is deemed effective as of the following business day.

LOCAL RULE CR-55 Records

- (a) **Removal of Papers, Records, etc.** The clerk shall not allow original copies of any papers, records, etc. in a criminal case to be removed from the clerk's office except upon order of the judge to whom the case is assigned.
- (b) **Disposition of Exhibits and/or Sealed Documents by Clerk.** Thirty days after a criminal action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to take the following actions:
 - (1) **Exhibits.** Destroy any sealed or unsealed exhibits filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial. Sealed exhibits submitted in miscellaneous cases to obtain pen registers, wiretaps, etc. will be maintained in the court's vault for three (3) years, if not previously retrieved by the U.S. Attorney and incorporated into a criminal case. At the end of this time, the sealed exhibits will be destroyed;
 - (2) **Sealed documents.** Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.
- (c) **Submission and Disposition of Trial Exhibits.**
 - (1) The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without an order of the court.
 - (2) Trial exhibits shall be properly marked, but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. If parties wish, additional copies of trial exhibits may be submitted in binders for the court's use.

SECTION III: ATTORNEYS

LOCAL RULE AT-1 Admission to Practice

- (a) An attorney who has been admitted to practice before the Supreme Court of the United States, or a United States Court of Appeals, or a United States District Court, or the highest court of a state, is eligible for admission to the bar of this court. He or she must be of good moral and professional character, and must be a member in good standing of the state and federal bars in which he or she is licensed.
- (b) Each applicant shall file an application on a form prescribed by the court. If the applicant has previously been subject to disciplinary proceedings, full information about the proceedings, the charges and the result must be given.
 - (1) A motion for admission made by a member in good standing of the state bar of Texas or the bar of any United States District Court shall accompany the completed admission form. The movant must state that the applicant is competent to practice before this court and is of good personal and professional character.
 - (2) The applicant must state in the application that he or she has read Local Rule AT-3, the “Standards of Practice to Be Observed by Attorneys” and the local rules of this court, and that he or she will comply with the standards of practice adopted in Local Rule AT-3 and with the local rules.
 - (3) The applicant must provide with the application form an oath of admission signed in the presence of a notary public on a form prescribed by the court. The completed application for admission, motion for admission and oath of admission shall be submitted to the court, along with the admission fee required by law and any other fee required by the court. Upon investigation of the fitness, competency and qualifications of the applicant, completed application forms may be granted or denied by the clerk subject to the oversight of the chief judge.
- (c) The clerk shall maintain a complete list of all attorneys who have been admitted to practice before the court.
- (d) An attorney who is not admitted to practice before this court may appear for or represent a party in any case in this court only by permission of the judge before whom the case is pending. When an attorney who is not a member of the bar of this court appears in any case before this court, he or she shall first present to the judge before whom the case is pending a motion requesting permission to appear. The applicant must state in the motion that he or she has read Local Rule AT-3, the “Standards of Practice to Be Observed by Attorneys” and the local rules of this court, and that he or she will comply with the standards of practice adopted in Local Rule AT-3 and with the local rules. Such motion also shall be accompanied by a \$10.00 local fee. An order shall then

be entered by this court granting or denying the motion.

- (e) All active attorneys who are admitted to practice before this court shall be assessed an annual bar membership fee. State and federal government attorneys are exempted from paying the fee, however, as long as they are in government service. The fee will be collected triennially, with the amount to be determined by the court prior to each collection period. All attorneys who have not paid the fee by the deadline shall be suspended from practice without further order of the court. Upon payment of outstanding fees, any attorney suspended for non-payment of fees will be immediately reinstated without order of the court.

LOCAL RULE AT-2 Attorney Discipline

- (a) **Generally.** The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this court should be familiar with the duties and obligations imposed upon members of this bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages customs and practices of this bar.
- (b) **Disciplinary Action Initiated in Other Courts.**
 - (1) A member of the bar of this court shall automatically lose his or her membership if he or she loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason other than nonpayment of dues, failure to meet continuing legal education requirements or voluntary resignation unrelated to a disciplinary proceeding or problem.
 - (2) When it is shown to the court that a member of its bar has been either disbarred or suspended, the clerk shall enter an order for the court, effective ten days after issuance unless sooner modified or stayed, disbaring or suspending the member from practice in this court upon terms and conditions identical to those set forth in the order of the other court.
- (c) **Conviction of a Crime.** A member of the bar of this court who is convicted of a felony offense in any state or federal court will be immediately and automatically suspended from practice and thereafter disbarred upon final conviction.
- (d) **Disciplinary Action Initiated in This Court.**
 - (1) **Grounds for Disciplinary Action.** This court may, after the member has been given an opportunity to show cause to the contrary, take any appropriate disciplinary action against any member of its bar:
 - (A) for conduct unbecoming a member of the bar;
 - (B) for failure to comply with these local rules or any other rule or order of this court;
 - (C) for unethical behavior;
 - (D) for inability to conduct litigation properly; or

- (E) because of conviction by any court of a misdemeanor offense involving dishonesty or false statement.

(2) **Disciplinary Procedures.**

- (A) When it is shown to a judge of this court that a member of this bar has engaged in conduct which might warrant disciplinary action, the judge receiving the information shall bring the matter to the attention of the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the court will notify the lawyer of the charges and give the lawyer opportunity to show good cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing if requested or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.
- (B) At any hearing, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time and charges. Prosecution of the charges may be conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

- (e) **Notification of Disciplinary Action.** Upon final disciplinary action by the court, the clerk shall send certified copies of the court's order to the State Bar of Texas, the Fifth U.S. Circuit Court of Appeals and the National Discipline Data Bank operated by the American Bar Association.
- (f) **Reinstatement.** Any lawyer who is suspended by this court is automatically reinstated to practice at the end of the period of suspension. Any lawyer who is disbarred by this court may not apply for reinstatement for at least three years from the effective date of his or her disbarment. Petitions for reinstatement shall be sent to the clerk and assigned to the chief judge for a ruling. Petitions for reinstatement must include a full disclosure concerning the attorney's loss of bar membership in this court and any subsequent felony convictions or disciplinary actions that may have occurred in other federal or state courts.

LOCAL RULE AT-3 Standards Of Practice To Be Observed By Attorneys

Attorneys who appear in civil and criminal cases in this court shall comply with the following standards of practice in this district:¹

- (A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
- (B) A lawyer owes, to the judiciary, candor, diligence and utmost respect.
- (C) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
- (D) A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.
- (E) Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.
- (F) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.
- (G) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.
- (H) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.
- (I) Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.
- (J) If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent. The Court is not bound to accept agreements of counsel to extend deadlines imposed by rule or court order.
- (K) Effective advocacy does not require antagonistic or obnoxious behavior and members of the

¹The standards enumerated here are set forth in the *en banc* opinion in *Dondi Properties Corp. v. Commerce Savings and Loan Association*, 121 F.R.D. 284 (N.D. Tex. 1988).

Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

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